

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/12/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

CMA.NO.395 of 1996

Govindasamy Appellant

-Vs-

1.Ravi

2.V. Rajaboopathi

3.United India Insurance Co. Ltd.
First Floor, Super Bazaar
Singarathoppu, Trichy

4.Oriental Insurance Company
Branch Office, Cuddalore. Respondents

For Appellant: Mr. Sella Pandian for
Mr.C. Selvaraju

For Respondents: Mr.K.S. Narasimhan - R4
Mr.P. Adiseshan - RR1 and 2

Appeal filed against the judgement and decree of the Motor Accident
Claims Tribunal, Trichirappalli, passed in MCOP.No.1385/1989 on 16.9.1993.

:JUDGEMENT

K.GNANAPRAKASAM, J.

- 1.This is an appeal by the claimant.
- 2.The claimant, as an heir to the estate of Venkatachalam, who died in the motor accident, which took place on 28.5.1989, made a claim of Rs.1,00,000/-.
- 3.In the claim petition, it is stated that the deceased is the claimant's father's brother's son. But, in the evidence, the claimant had deposed that the deceased Venkatachalam is his brother's son and they are living as a joint family and the properties were not divided among themselves. It is also stated that the parents of the deceased died while he was young and even thereafter, they were all living together. The respondents have denied the relationship claimed by the claimant to the deceased and further stated that

the definition of ' legal representatives' as stated in CPC are applicable to the Motor Vehicles Act also and the claimant is a Hindu and therefore, the Hindu Succession Act would be applicable.

4.The claimant, in the petition, has stated that the deceased is his father's brother's son and as such, he is not a Class I heir. His further claim is that the deceased is his brother's son and he would come under entry 7 in Class I heirs. The claimant also filed a legal heir certificate Ex.P13, wherein the relationship of the deceased is stated as 'uncle (rpj;jg;gh)'. It is also stated, in the said certificate that the same was issued only to receive the compensation amount. As there are contradictions between the statement made in the petition and the evidence given, the Tribunal has held that the claimant has not proved his correct relationship to the deceased and therefore, dismissed the petition. Aggrieved by the same, this appeal has been filed.

5.The learned advocate for the appellant has submitted that the claimant is the only heir of the deceased Venkatachalam, entitled to receive the compensation. It is further submitted that in the absence of any rival claim, the Tribunal should have accepted the claim made by the appellant.

6.On the contrary, the learned advocate for the respondents 3 and 4, namely, the United India Insurance Company and the Oriental Insurance Company, has submitted that the claimant having failed to prove his correct relationship to the deceased, is not entitled to the claim at all.

7.Now let us see, whether the claimant is entitled to receive compensation.

8.The claimant's specific case is that he and the deceased were the members of the joint family and the joint family properties were also not divided. Of course, in the petition, he has stated that the deceased is his father's brother's son and in the evidence, he has stated that the deceased is his brother's son. In the legal heir certificate, it is stated that the deceased is the 'uncle (rpj;jg;gh)', of the claimant. Though there are 3 versions about the relationship of the deceased to the claimant, it is nobody's case that the claimant is not at all related to the deceased. As per the claim made in the petition that the deceased is his father's brother's son and he would not fall under Class I heir of the Hindu Succession Act. In the evidence, he has stated that the deceased is his brother's son and if that be so, the claimant would come under entry 4 of Class II heirs. In the legal heir certificate, the relationship of the deceased to the claimant is stated as 'uncle (rpj;jg;gh)', . Then the claimant would come under entry 7 of Class II heirs. It is not the case of the respondents that the claimant is not at all related to the deceased. That being so, we could safely come to the conclusion that the deceased is related to the claimant and vice-versa. It is in evidence that on the death of Venkatachalam, there is a loss to the estate, to which the claimant is entitled to.

9.Now, let us consider, who is entitled to apply for compensation, in a motor accident case. In our case, the accident took place on 28.5 .1989 and therefore, the Motor Vehicle Act, 1939 is applicable. Section 110A of the Act states as follows:-

"Application for compensation:- (1) An application for compensation arising out of an accident of the nature specified in sub section (1) of Section 110 may be made-

- (a)by the person who has sustained the injury; or
- (aa) by the owner of the property; or

(b)where death has resulted from the accident, by all or any of the legal representatives of the deceased, or

(c)by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be;

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application. "

10.Clause b and c of Section 110A of the Motor Vehicles Act (hereinafter referred to as the Act) provides that an application for compensation may be made where death has resulted from the accident, by all or any of the legal representatives of the deceased, or by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Proviso to Section 110A states, "where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application." The expression 'legal representative' has not been defined under the Motor Vehicles Act, 1939. But Section 2(c) of the Madras Motor Accidents Claims Tribunal Rules 1961, states that, the term 'legal representatives' occurring in Section 110A is stated to have the same meaning assigned to it under Section 2(11) of CPC. Section 2(11) of CPC defines 'legal representative' as "a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued". The said definition, no doubt, in terms, does not apply to a case before the Claims Tribunal, but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in CPC. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. We can also state that the term 'legal representative' occurring in Section 110A of the Act, has wider impact than the definition of the terms contained in Section 2(11) of CPC. Clause b and c of Section 110A of the Motor Vehicles Act, 1939 provide that all or any of the legal representative of the deceased are entitled to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident. Proviso to Section 110A of the Act gains some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Clause b of Section 110A states, "application for compensation may be made, "by all or any of the legal representatives of the deceased and Clause c of Section 110A provides that any agent duly authorised by the person injured or all or any of the legal representatives of the deceased can make such an application. Both the person or persons who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in Section 110A of the Act.

11.Now, we have to consider, whether the claimant would fall under the category of 'legal representative', as stated under Clause b and c of Section

110A of the Motor Vehicles Act.

12. A similar question arose in the case of *Perumal and others Vs. G. Ellusamy Reddiar and another* (1974-ACJ-182), wherein the Division Bench of this Court had dealt with the definition of 'legal representative' under Section 110A of the Motor Vehicles Act, 1939 and also the definition available under Section 2(11) of CPC in extenso and under Section 111A of the Motor Accidents Claims Tribunal Rules, 1961. "Legal representative" shall have the meaning assigned to it under clause (11) of Section 2 of CPC, 1908. The definition given under Section 2(11) of CPC is wide. It takes in not only administrators, executors and heirs, but all other persons who represent the estate of the deceased. The definition also says that the terms include even persons who intermeddle with the estate of the deceased. Then the Division Bench went on considering the definition available in Fatal Accidents Act and also in Legal Representatives Act and opined that Section 110 to 110F of the Act (Motor Vehicles Act, 1939) being only procedural in character and have nothing to do with the substantive rights and liabilities of parties, do not make any reference to either loss of benefit or loss to the estate as heads on which compensation can be claimed in the case of a person whose death was caused by a motor accident. It is further held that under Section 110A of the Act, in the case of death of a person, compensation could be claimable not only for the loss to the estate but also loss of benefit to the dependants as contemplated under Section 1A of the Fatal Accidents Act. The term 'legal representative', therefore, should necessarily include not only persons who represent the estate of the deceased (who can claim loss to the estate of the deceased) and the next-of-kin who are mentioned as dependants under Section 1A of the Fatal Accidents Act, who can claim compensation for loss of benefit to themselves, whether they represent the estate of the deceased or not. In other words it should take in all persons who can maintain an action under the Legal Representatives' Suits Act (or under Section 2 of the Fatal Accidents Act, as the case may be) as well as those who can maintain an action under Section 1A of the Fatal Accidents Act. That being so, one cannot restrict the meaning of the term 'legal representative' occurring in Section 110A of the Act as that in Section 2(11) of CPC.

13. In the case of *Gujarat State Transport Corporation Vs. Ramanbhai Prabhatbhai and another* (1987-ACJ-561), the Supreme Court considered the term 'legal representative' on the background of English Fatal Accidents Act, 1846 and the Indian Fatal Accidents Act, 1855 and other Acts including the Royal Commission Report, 1978 and also relied upon the earlier decision of the Supreme Court in the case of *Minu B. Mehta Vs. Balkrishna Ramchandra Nayan*, (1977-ACJ-118-SC) and considered Section 110A of the Motor Vehicles Act and the definition available under Section 2(11) of CPC, 1908. There were divergent opinions among the High Courts in India, as regards the maintainability of action under Section 110A of the Act by persons other than the wife, husband, parent and child of the person who dies on account of a motor vehicle accident. All these cases were considered by the High Court of Gujarat in its decision in *Megjibhai Khimji vira Vs. Chaturbhai Taljabhai* (1977-ACJ-253), wherein it was held, "The first set of cases are those which are referred to in paragraph 5 of the above decision which lay down that every claim application for compensation arising out of a fatal accident would be governed by the substantive provisions in Section 1A and 2 of the 1855 Act and no dependant of the deceased other than the wife, husband, parent or child

would be entitled to commence an action for damages against the tortfeasors. Amongst these cases are P.B. Kader Vs. Thatchamma (AIR-1970-Kerala-241) and Dewan Hari Chand Vs. Municipal Corporation of Delhi, (1973-ACJ-87-Delhi). The second group of cases are those referred to in paragraph 6 of the decision of the Gujarat High Court. They are Perumal Vs. G. Ellusamy Reddiar (1974-ACJ-182) (Madras) and the Vanguard Insurance Co. Ltd. Vs. Chellu Hanumantha Rao, 1975-ACJ-344 (Andhra Pradesh). These cases lay down that while the compensation payable under Section 1A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased who are entitled to succeed to the estate of the deceased. The third group of cases are those referred to in paragraph 7 of the judgement of the Gujarat High Court. They are Mohammed Habibullah Vs. K. Seethammal, 1966-ACJ-349 (Madras), Veena Kumari Kohili Vs. Punjab Roadways, 1967-ACJ-297 (P&H) and Ishwar Devi Malik Vs. Union of India, 1968-ACJ-141 (Delhi), which take the view that a claim for compensation arising out of the use of a motor vehicle would be exclusively governed by the provisions of Sections 110 to 110F of the Act and bears no connection to claims under the 1855 Act and the Claims Tribunal need not follow the principles laid down under the latter Act. Having considered all the three sets of decisions referred to above, Ahmadi, J. {as he then was} who wrote the judgement in Megjibhai Khimji Vira Vs. Chaturbhai Taljabhai, 1977-ACJ253 (Gujarat), came to the conclusion that an application made by the nephews of the deceased who died on account of a motor vehicle accident was clearly maintainable under Section 110A of the Act. After referring to these cases, the Supreme Court had accepted the view that was taken by the Gujarat High Court, which is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110A to 110F of the Act. These provisions are in consonance with the principles of Law of Torts that every injury must have a remedy.

14.As we have already seen that the claimant and the deceased were the members of the joint family and there is a loss to the estate on the death of Venkatachalam, we are of the opinion that the claimant is entitled for compensation. The tribunal has not arrived at any amount of compensation of payable to the claimant, in view of its finding that the claimant is not related to the deceased. But, now as we have arrived at the conclusion that the claimant is related to the deceased, he is entitled to the claim on the ground of loss caused to the estate. Taking into consideration over all aspects of the case and as there is no material that the claimant is not at all related to the deceased, the contradictions pointed out by the respondents could be brushed aside and in order to meet the ends of justice, we feel a sum of Rs.50,000/- could be awarded towards loss of estate on the death of the deceased Venkatachalam.

15.In the result, the civil miscellaneous appeal is allowed and the award and decree passed by the Tribunal is set aside. The appellant is entitled for a compensation of Rs.50,000/-, which shall carry interest 9% per annum from the date of the petition till the date of deposit/realisation and the said amount shall be paid by the 4th respondent herein. No costs.

Index:Yes

Web: Yes
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To:

1.The Motor Accident Claims Tribunal, Trichirappalli
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